

# The Right to Health and Education: Constitutional Guarantees and Human Rights Standards

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## I. INTRODUCTION

The rights to health and education form the cornerstone of a society committed to equality and human development. The protection and promotion of human rights form the milestone of democratic governance and sustainable development. They enable individuals to live with dignity, participate meaningfully in community life, and exercise other rights effectively. The primary constitutional provisions for the right to health and education in India are Article 21A (guaranteeing free and compulsory education for children aged 6-14) and various Directive Principles of State Policy, such as Article 39(e) and Article 41 (mentioning health, education, and public assistance). While Article 21A is a fundamental right, the others are directive principles, though the judiciary has interpreted health as a fundamental right under Article 21.<sup>1</sup> Among these, the right to health and the right to education occupy a central position in ensuring human development and social equity. Despite their recognized importance, these rights have historically been marginalized as “directive principles” or non-justifiable goals in many legal systems. However, the global human rights movement and evolving constitutional jurisprudence have gradually elevated them to enforceable entitlements.

The issue of education was primordial in the minds of the makers of the Constitution and it was even discussed in the Constituent Assembly Debates during the contemplations on Part III and IV of the Constitution of India. Right to education did not find a place under the fundamental rights (Part III) of the

Constitution in spite strong discussions on other related consequences of education like age of the child, language, minority rights etc. It was laid under article 45 (Directive Principles of State Policy) of the Indian Constitution which furnished, “the State shall endeavor to provide, within a period of 10 years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years”.<sup>2</sup> Even though Article 29 of the Constitution provides, “no citizen shall be denied admission into any educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste or language”<sup>3</sup>, but it unsuccessful to place the right to education under the fundamental rights of the Constitution and provide guarantee to the foundational or elementary education to all regardless of their social and economic background. Finally, the amendment to the Constitution was made to merge the educational right with fundamental right at the instance of Supreme Court’s decisions. The most significant amendment to the constitution for the merger of education as a fundamental right was 86th amendment in the year 2002. The said amendment embraced Article 21A within Part III of the Constitution considering right to Education as a fundamental right and children aging from 6 to 14 are furnished with free and compulsory education.<sup>4</sup>

The right to education is a fundamental right in many countries, most notably in India, which perceives it for children between the ages of 6 and 14 through Article 21A of the Constitution and the Right to Education Act of 2009. The Act mandates free and compulsory elementary education, indulge the government to

<sup>1</sup> Constitution of India, 1950.

<sup>2</sup> Constitution of India, 1950, Art.45.

<sup>3</sup> Constitution of India, 1950. Art.29.

<sup>4</sup> Constitution of India, 1950. Art.21A.

provide it and ensuring no child is disowned a place in a neighborhood school due to fees or expenses. While the right aims to provide quality, equitable education, quality remain and challenges in implementation, leading to policies like the National Education Policy (NEP) 2020 which seeks to build on the RTE framework and expand its scope.<sup>5</sup>

## II. OBJECTIVES

- To investigate diverse legal aspects of the Right to health and Right to education.
- To research and analyze the implications and effects of the Indian Constitution on the Right to health and Right to education.

This paper explores the legal status of these rights within constitutional frameworks and examines their interplay with international human rights standards. It seeks to understand how constitutional guarantees can operationalize the human rights obligations of states and promote inclusive development.

## III. NATIONAL EDUCATION POLICY

The country recognized several commissions like the Radha Krishnan Commission on university education (1948-49), the Kher Committee on primary education (1948), the Mudaliar Commission on secondary education (1953), and the last and the most comprehensive the Kothari Commission (1964-66). These commissions have intended almost every aspect of the education.<sup>6</sup> Radhakrishnan Commission of 1948 accompanied the academic issue in a larger context as universities come under its preview.<sup>7</sup>

Afterward, the Kothari Commission of 1968, while repeating the constitutional instructions about free and compulsory education up to the age of 14, establishes focus on advanced outlays for education and advised the diminutions of higher education. The

Gajendragadkar Commission that tracked on the path of the Kothari Commission resides on the governance of universities that offer the State greater control on higher education. Such autocratic configuration took a great importance during the emergency when education was transferred from the State to the Concurrent list.<sup>8</sup> Concerning to the subject of Kothari Commission, the Government of India drafted the 'National Policy on Education 1968' (NPE).<sup>9</sup> Compulsory education for all the children between the age group of 6-14 years, satisfactory emoluments, opportunities of training and freedom to upgrade the teaching capacities of teachers; three language formula; equal contingency of education regardless of physical, social and economic background; eminence to tribal and backward areas; integration of local community to build national integration; importance to science, agriculture, mathematics and technical education to improve the economy; assessment to find the talents of students; availability of cost effective books; comprehensive examination pattern; augmentation of secondary education to the remote areas and significance to technical and vocational training at the secondary education level; considerable significance to university education; establishment of part time courses in widespread; special focus on adult education; incorporation of sports and co-curricular activity within the education curriculum; secure the minority educational interests; uniform pattern of educational system throughout the country on 10+2+3 pattern; and review of policy on every 5 years interval are some of the important stipulations of NPE 1968.<sup>10</sup> The NPE, 1986<sup>11</sup> was the follow-up endeavors to bring changes in the education system. Under this policy, the role of education was seen to be multifarious and intended to be essential for all with the aim of all-round development. Further it brings about changes in the thought patterns and contributes to the national grounded on secular, socialistic, and democratic

<sup>5</sup> In India, Article 21A, inserted by the 86th Constitutional Amendment in 2002, makes education a fundamental right for children between 6 and 14 years of age.

<sup>6</sup> Saikia, S. "History of Education in India" (Mani Manik Prakash Publishers, 1998).

<sup>7</sup> Kamat, A. R. "Educational Policy in India: Critical Issues", 29, *Sociological Bulletin*, 189, (1980)

<sup>8</sup> Government of India, Report of University Education Commission. (1950)

<sup>9</sup> Raina, Badri. Education Old and New: A Perspective, 17, *Social Scientist*, 7-8 (1989).

<sup>10</sup> National Policy on Education, 1968, Government of India (1968).

<sup>11</sup> National Policy on Education 1986, Government of India (1986).

values which are enshrined in our constitution. Education was considered to be providing manpower, promotes research and development in economy leading to national self-reliance. A unique stake both in the present and future was the key principle of National Policy on Education.<sup>12</sup> It aims to foster equality and motivation to the young minds to move towards international cooperation, peaceful co-existence and solidarity despite their socio- cultural diversities.<sup>13</sup> To sort-out the stumbling-block of NPE 1986, a commission was appointed which came up with several important suggestions and they were incorporated in the NPE, 1992.

#### IV. CONSTITUTIONAL FOUNDATIONS OF THE RIGHT TO HEALTH

##### A. Recognition and Scope

Everyone has a right to good health. The Preamble of the Constitution of World Health Organization (WHO) defines health as “A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The Preamble also states that the achievement of any State in the protection and promotion of health is of value to all.<sup>14</sup> The pandemic has highlighted the significance of human health and the necessity to enhance public health in the Covid-19 response.

Right to health is an age-old phenomenon without which we cannot enjoy our human life. There is a close nexus between health and life. The Constitution of India in its preamble mulls that every citizen of India has to get a dignified life.<sup>15</sup>

Dignified life means Quality of life where everyone can be amused by their own basic rights. Constitution

of India through its Part III provides the fundamental rights to its citizens and some to non-citizen also.<sup>16</sup> The Constitution of India not only provides for the health care of the people but also directs the State to take measures to improve the condition of health care rights of the peoples.<sup>17</sup>

##### B. State as a Benefactor

Right to health is recognized as a basic right across the globe and the states are responsible to ensure the same.<sup>18</sup> The major responsibility of the state is to provide good quality healthcare and educational services to the citizens. State formulates different policies and plans for providing efficient healthcare and educational services to the people. It is clear that healthcare and educational services can be provided by public and private sector. It is also true that there are states where private sector provides better and efficient healthcare and education as compared to public sector.

##### C. State as a Regulator

State regulates the healthcare system by developing norms and standards for quality assurance and ensures the implementation of policies and strategies formulated by the state. As a regulator State passes various laws and establishes regulatory bodies at national, state and local levels for regulating the healthcare services provided to the people. For example, The National Medical Commission Act, 2019<sup>19</sup> regulates the professional conduct of health workers in India.

One of the major goals of this Act is to improve the accessibility to quality and affordable medical

<sup>12</sup> Sen, Rahul & Bhattacharya, D. K. Education in India, 21, Indian Anthropologist 68 (1991).

<sup>13</sup> Ghosh S. C., “*The History of Education in Modern India*”, 184 (Orient Longman Limited, New Delhi, 2000).

<sup>14</sup> Regional Committee for the Eastern Mediterranean, World Health Organization [WHO], The role of government in health development, at 3, EM/RC53/Tech.Disc.1 (July2006), [https://applications.emro.who.int/docs/em\\_rc53\\_tech\\_disc.1\\_en.pdf](https://applications.emro.who.int/docs/em_rc53_tech_disc.1_en.pdf), [Hereinafter ‘Role of government’].

<sup>15</sup> Avni Kritika, 'Right to health under Article 21 of the Indian Constitution', Law Audience, Journal, Vol. 1, Issue 2, Dec. 2018, pp. 4-5

<sup>16</sup> Maddurthi Swathi and Jay Sree, "Right to Health under the Constitution of India", Lambert Academic Publishing, 2012.

<sup>17</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health.

<sup>18</sup> Constitution of the World Health Organization, 36(11), AJPH, 1315-1323 (1946).

<sup>19</sup> Repealed the Indian Medical Council Act, 1956; The National Medical Commission Act, No.30 of 2019, [Hereinafter ‘The National Medical Commission Act’].

education and to ensure availability of adequate and high quality medical professionals in the country.

## V. THE CONCEPT OF RIGHT TO EDUCATION IN INDIA

Right to education, of course, does not mean the right to same kind or same degree of education for all but it means the minimum standard or basis of quality education to all, be it an elementary or foundational education. Article 26 of the Universal Declaration on Human Rights mentions, “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education must be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit”.<sup>20</sup>

## VI. CONSTITUTIONAL GUARANTEES OF THE RIGHT TO EDUCATION

### A. Evolution and Legal Status

Education has long been recognized both as a civil and socio-economic right. The UDHR (Article 26) and the ICESCR (Article 13) establish education as a right of every individual and an obligation of the state.<sup>21</sup> Constitutionally [The UNESCO Convention against Discrimination in Education (1960) and the Convention on the Rights of the Child (Article 28)], most nations guarantee free and compulsory primary education and progressively ensure access to secondary and higher education.

In countries such as India (Article 21A), Brazil (Article 205), and South Africa (Section 29), the right to education has been given strong constitutional grounding, reflecting a shift from aspiration goals to enforceable mandates.

### B. Barriers and Implementation

Despite constitutional guarantees, disparities in educational quality, gender inequality, and socio-economic exclusion persist. Implementation gaps often result from inadequate funding, governance deficits, and systemic discrimination. Thus, realizing the constitutional promise requires not only legal recognition but also political will and equitable policy design.<sup>22</sup>

## VII. INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS

International human rights law provides a universal framework for the realization of health and education rights.<sup>23</sup> Constitutions around the world incorporate the rights to health and education in varying forms—some as enforceable fundamental rights, others as directive principles or state policy objectives. The ICESCR obliges states to take progressive steps to ensure the highest attainable standard of health and free primary education for all. The Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) further reinforce these obligations.<sup>24</sup>

Regional human rights systems—such as the African Charter on Human and People’s Rights (Articles 16 and 17)<sup>25</sup> and the European Social Charter—complement global standards, often providing stronger enforcement mechanisms through regional courts and commissions.

### A. The Right to Health in National Constitutions

India: Article 21 of the Constitution, as interpreted by the Supreme Court, encompasses the right to health as an integral part of the right to life. In *Parmanand Katara v. Union of India* (1989), the Court held that the preservation of life is of paramount importance.<sup>26</sup> The Right to health is not explicitly stated in the

<sup>20</sup> Article 26 Clause (1) of Universal Declaration of Human Rights, United Nations Organization, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>21</sup> CESCR General Comment No. 13: The Right to Education.

<sup>22</sup> International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>23</sup> United Nations, Universal Declaration of Human Rights (1948).

<sup>24</sup> Convention on the Rights of the Child (1989).

<sup>25</sup> Liebenberg, S. (2010). Socio-Economic Rights: Adjudication under a Transformative Constitution

<sup>26</sup> Supreme Court of India. (1989). *Parmanand Katara v. Union of India*, AIR 1989 SC 2039.

Constitution but in Articles 42 and 47 of the Directive Principles of State Policy.

South Africa: Section 27 of the Constitution explicitly guarantees the right to health care, food, water, and social security, making it directly justifiable.

Brazil: Article 196 mandates the state to guarantee health as a right of all citizens and a duty of the government, ensuring access through the Unified Health System (SUS).<sup>27</sup>

#### B. The Right to Education in National Constitutions

India: Article 21-A guarantees free and compulsory education to all children aged 6–14 years, following the landmark *Unnikrishnan v. State of Andhra Pradesh* (1993) judgment.<sup>28</sup>

South Africa: Section 29 ensures the right to basic education, which the Constitutional Court has interpreted as immediately enforceable.<sup>29</sup>

Germany: The Basic Law provides for education as a shared responsibility between the state and parents, with strong guarantees for equal access.

### VIII. INTERDEPENDENCE AND CROSS-LINKAGES

Health and education are mutually reinforcing rights. Access to quality education enhances health awareness and outcomes, while a healthy population contributes to educational attainment and productivity. Both rights also intersect with gender equality, poverty reduction, and sustainable development goals (SDGs 3 and 4).

### IX. CHALLENGES IN REALIZATION

Despite legal commitments, the practical realization of these rights faces multiple challenges:

- Resource constraints and unequal allocation of public funds.
- Structural inequities rooted in socio-economic and geographic disparities.

- Privatization and commercialization of health and education services.
- Weak institutional mechanisms for monitoring and accountability.
- Public health crises (e.g., pandemics) exposing systemic vulnerabilities.

### X. CONCLUSION AND SUGGESTIONS

The right to health and education remains integral to the realization of human dignity and democratic citizenship. Both stands at the intersection of constitutional law and human rights. Their effective realization is not merely a legal obligation but a moral and developmental imperative. While constitutional guarantees have broadened the normative framework, their effective enforcement requires political will, adequate financing, and strong institutional mechanisms. Integrating human rights principles into national development planning and ensuring participatory governance can bridge the gap between legal recognition and lived reality. Achieving substantive equality in access to health and education thus requires sustained judicial activism, policy innovation, and international solidarity.

Evidence suggests that improvements in drinking water supply, nutrition and sanitation, environment, housing and in employment have been more beneficial for health status enhancement than preventive and curative healthcare services. The field of public health responsibility include assuring an adequate local public health infrastructure, preventing the spread of communicable disease, promoting healthy communities, preparing for and responding to emergencies, etc.<sup>30</sup> It must be ensured that there is evenhanded distribution of education health care services across the country and no one should be deprived of their basic human right to health and education in the name of caste creed or financial status. Population, literacy and economy play a major role in the public health and hence, state should take measures which are suitable according to their conditions.

<sup>27</sup> Constitution of the Federative Republic of Brazil, 1988.

<sup>28</sup> Supreme Court of India. (1993). *Unnikrishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178.

<sup>29</sup> Constitution of the Republic of South Africa, 1996.

<sup>30</sup> *Government's Responsibility for Public Health*, MN Department of Health (Apr. 10, 2023, 11:50AM), <https://www.health.state.mn.us/communities/practice/resources/chsadmin/mnsystemresponsibility.html>.

Specifically, in a highly populated country like India, the state needs to significantly increase investments in the education and health sector as compared to less populated countries. The Government should try to address the drawbacks of Indian health and education sector through various programs, schemes and missions.

However, a more comprehensive approach is sanctioned and the National Health Bill proposed in 2009, National Policy on Education 1986 and RTE 2009 is the way forward to make right to health and right to education meaningful to the citizens.

Literacy alone would never sufficient for the growth of a child but an extensive quality education which takes care of the child development is necessary. Due to lack of effective Education Policies and RTE, the education for many has become a dream especially the Socio economically backward class. Being a fundamental human right, the State is obliged to implement the right to education on a mobilized to render justice to all without discriminating on the basis of socio-economic considerations.

Some Suggestions are as follows:

#### Increase Public Investment

The government should significantly enhance budgetary allocation for both health and education sectors to align with global standards. Adequate financing is essential to improve infrastructure, human resources, and quality outcomes.

#### Strengthen Primary Healthcare and Schooling Systems

Expanding primary healthcare centers, improving district hospitals, and upgrading school infrastructure especially in rural and marginalized areas will help reduce disparities.

#### Promote Capacity Building

Continuous training of medical professionals, teachers, and frontline workers must be prioritized to ensure quality service delivery.

#### Ensure Inclusive Access

Policies must focus on marginalized communities, including women, children, persons with disabilities, tribal populations, and economically weaker sections. This includes strengthening reservation systems,

scholarships, nutrition programs, and special healthcare initiatives.

#### Enhance Monitoring and Accountability

Transparent mechanisms should be established for monitoring RTE compliance, public health services, and utilization of government funds. Community-based monitoring can increase accountability.

#### Integrate Technology and Digital Solutions

Digital health platforms, telemedicine services, and smart classrooms can bridge accessibility gaps, provided adequate digital infrastructure is developed in underserved regions.

#### Promote Preventive and Holistic Approaches

Public health campaigns should focus on preventive healthcare, mental health awareness, sanitation, nutrition, and lifestyle modification. Similarly, education systems must emphasize holistic development-ethical, emotional, cognitive, and social.

#### Strengthen Public-Private Partnerships

Responsible collaborations between government, private institutions, and NGOs can expand reach and build capacity without compromising equity and accountability.

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